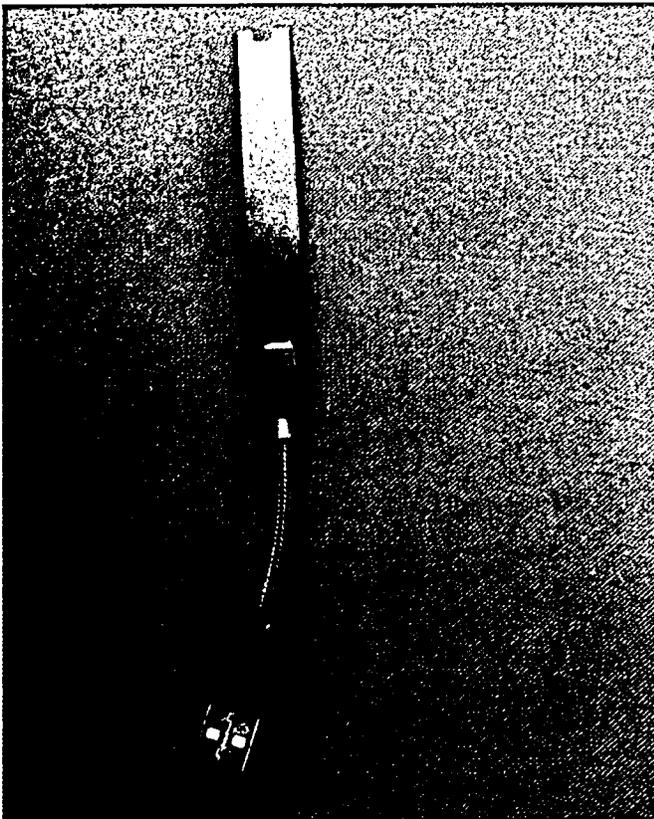




youth to hide vaping products from parents and other adults. Eonsmoke's actions have contributed to the epidemic of youth vaping throughout the country, and in North Carolina.



 eonsmoke • Follow

**eonsmoke Mom! It's a USB drive!! #eonsmoke**

#juulcompatible #juulgang #vapeshops  
#vapeshopkl #vaporizer #juul #juulvapor  
#juulcentral #doit4juul #juulcentral  
#juulnation #cigarette #juulpods #juulgang  
#smok #bovaping #smokeshop #smokeshops  
#smokeshopowners #smokeshopbogota  
#vonerl #bovape #eonpods #xfire #xfirepix  
#juulkiller #eonpods

Issacyoung\_ how the fuck is this possible  
gofookyourselabeech I told my dad that  
about my old juul and he actually fell for it lol  
Indirahasanah Apa anitu

404 likes  
JANUARY 15, 2018

Log in to like or comment. ...

Vapor products are defined under North Carolina law as “any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution contained in a vapor cartridge.” N.C.G.S. § 14-313(a)(5). When the e-liquid reaches a certain temperature, it converts to an aerosol that a user inhales or “vapes.” Nicotine is a highly addictive element found in combustible cigarettes and other tobacco products. As a result, the State regulates e-liquids and other vapor products that contain nicotine in the same manner as tobacco products.<sup>1</sup>

Nicotine is poisonous to the human brain. The developing brains of teenagers and children are particularly vulnerable to nicotine, and have what one study describes as “exquisite sensitivity” to nicotine’s neurotoxic effects. Even small and brief exposures to nicotine can cause lasting neurobehavioral damage in adolescents.<sup>2</sup> When a young person gets addicted to nicotine, it makes it much more likely that he or she will later become a user of traditional cigarettes or illegal drugs.<sup>3</sup>

---

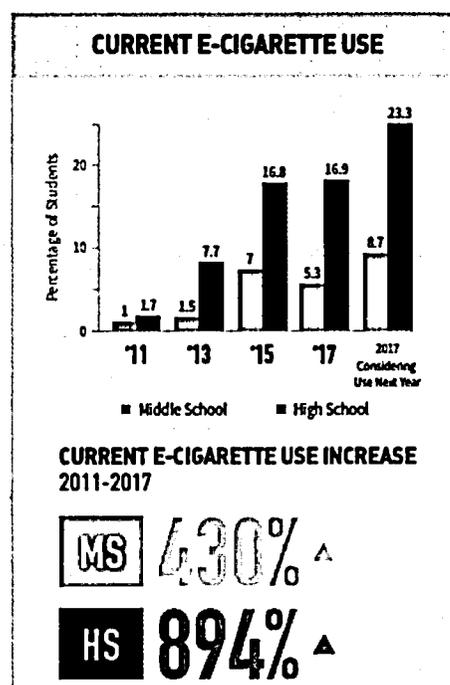
<sup>1</sup> Vapor products and components of vapor products (e.g., device-compatible cartridges containing e-liquids, and separately bottled e-liquids and juices) fall under the umbrella of “tobacco products” as defined under North Carolina law. See N.C.G.S. § 14-313(a)(4).

<sup>2</sup> Yael Abreu-Villaça, et al., *Nicotine is a neurotoxin in the adolescent brain: critical periods, patterns of exposure, regional selectivity, and dose thresholds for macromolecular alterations*, 979 *Brain Research* 114-28 (July 25, 2003), <https://www.ncbi.nlm.nih.gov/pubmed/12850578>.

<sup>3</sup> U.S. Department of Health, and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease, Prevention and Health Promotion, Office on Smoking and Health, *E-Cigarette Use Among Youth And Young Adults: A Report of the Surgeon General — Executive Summary* (2016), [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Exec\\_Summ\\_508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Exec_Summ_508.pdf).

Eonsmoke is one actor in this billion-dollar industry, producing and promoting candy- and cereal-flavored e-liquids that are specifically targeted to lure minors to using its products. Among the flavors Eonsmoke manufactures and sells are “gummy bear” and “cotton candy” and “cereal killer,” which is made to resemble Froot Loops™. In addition, Eonsmoke’s products—which contain higher concentrations of nicotine than its competitors’—are some of the most dangerous and addictive on the market.

Both the U.S. Surgeon General and the former Food and Drug Administration (FDA) Commissioner have described underage use of e-cigarettes as an “epidemic.”<sup>4</sup> Statistics confirm these warnings from public health advocates. In 2011, just 1.7% of North Carolina high school students reported using e-cigarette products; by 2017, 16.9% of high school students and 5.3% of middle school students reported using e-cigarette products within the last 30 days, making e-



<sup>4</sup> U.S. Department of Health and Human Services, Public Health Service, Surgeon General’s Advisory on E-cigarette Use Among Youth (Dec. 18, 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>; see also U.S. Food and Drug Administration, FDA News Release: *FDA takes new steps to address epidemic of youth e-cigarette use, including a historic action against more than 1,300 retailers and 5 major manufactures for their roles perpetuating youth access* (Sept. 12, 2018), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620184.htm>.

cigarettes by far the most commonly used tobacco product among youth.<sup>5</sup> According to the National Youth Tobacco Survey, more than 3.6 million middle and high school students were current e-cigarette users in 2018, an increase of more than 1.5 million students since 2017.<sup>6</sup> The reason for such a dramatic spike in underage use of nicotine is plain: a 2019 study showed that use of e-cigarettes among young people results in higher nicotine dependence levels than nicotine dependence related to combustible cigarette use. While e-cigarette manufacturers and retailers claim that e-cigarettes are a safer alternative to combustible cigarettes, among young adults, use of e-cigarettes carries a greater risk of addiction than from combustible cigarettes.<sup>7</sup>

The spike in underage use of e-cigarettes is the predictable result of the youth-oriented marketing and product design engaged in by Eonsmoke, and exacerbated by its egregious disregard for age-verification procedures required by law to ensure that these harmful and highly addictive products are not sold to minors.

---

<sup>5</sup> NC DHHS, Division of Public Health, Tobacco Prevention and Control Branch, *North Carolina Youth Tobacco Survey Middle & High School Fact Sheet*, available at <https://www.tobaccopreventionandcontrol.ncdhhs.gov/data/yts/docs/2017-YTS-FactSheet-FINAL.pdf>.

<sup>6</sup> U.S. FDA: Youth Tobacco Use: Results from 2018 National Youth Tobacco Survey (Nov. 15, 2018), <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>.

<sup>7</sup> Mateusz Jankowski et al., *E-Cigarettes Are More Addictive Than Traditional Cigarettes—A Study in Highly Educated Young People*, 16 Intl. J. of Envir. Research and Pub. Health 2279 (2019).

The State brings this action to stop these unlawful practices and protect North Carolina youth from the devastating effects of nicotine addiction resulting from Eonsmoke’s business conduct. The State seeks to enjoin Eonsmoke from selling or marketing its products—which are specifically designed to lure minors—in North Carolina, and hold it accountable for its unlawful acts in the form of civil penalties, costs, and reasonable attorneys’ fees.

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff, the State of North Carolina (“the State”), acting on relation of its Attorney General, Joshua H. Stein, brings this action pursuant to Chapters 75 and 114 of the North Carolina General Statutes. The Attorney General is charged, among other things, with enforcing North Carolina’s Unfair or Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1 *et seq.*, on behalf of the State.

2. Defendant Eonsmoke LLC is a foreign corporation with its principal place of business in Clifton, New Jersey. Eonsmoke is both a manufacturer and online retailer of e-cigarettes and other vapor products. It sells nicotine-containing e-liquids and juices, which it also refers to as “e-juice” and “vape juice.”

3. At all relevant times, Eonsmoke has been engaged in trade or commerce in the State of North Carolina and subject to North Carolina’s Unfair or Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1 *et seq.*

4. This Court has personal jurisdiction over Eonsmoke. *See Affidavit of William G. Lindsey*, ¶¶ 4, 6-7, Ex. 1.

5. The Attorney General's Office served a Civil Investigative Demand on Eonsmoke on or about June 21, 2019, pursuant to N.C.G.S. §§ 75-9 *et seq.* In response, Eonsmoke only partially complied, producing certain records and documents in response to some but not all of the Attorney General's requests.

6. The Court has subject matter jurisdiction over this dispute, and venue is proper in Durham County pursuant to the Attorney General's selection under N.C. Gen. Stat. § 75-14.

### FACTUAL ALLEGATIONS

#### **I. Eonsmoke Uses Kid-Friendly Flavors to Make Dangerous Nicotine Products Appealing to Minors.**

7. It has long been recognized that flavors create an on-ramp for youth and non-smokers to begin using tobacco products. Utilizing kid-friendly flavors to make tobacco flavors more palatable to youth is a strategy first employed by the tobacco industry. An internal Lorillard memorandum, which became public as a result of the Master Settlement Agreement, demonstrated that, because younger consumers were "attracted to products with 'less tobacco taste,'" company officials suggested using "data from the company which produced 'Life Savers' as a basis for determining which flavors enjoy the widest appeal" among youth.<sup>8</sup>



---

<sup>8</sup> Letter from S.T. Jones to File at 2 (June 8, 1979), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=mjxf0129>.

8. Just like the tobacco industry of old, Eonsmoke has disregarded the dangers associated with underage nicotine use in the name of profit. Eonsmoke's business strategy is premised on selling candy- and cereal-flavored e-liquids designed to attract children, including flavors like gummy bears, cotton candy, sour gummy worms, and Froot Loops.



Eonsmoke Instagram post advertising 6% nicotine product designed to mimic Froot Loops

9. Many of Eonsmoke's products contain 6% nicotine concentration, meaning they are substantially more dangerous and addictive than the leading e-liquids on the market, which advertise, at most, a 5% nicotine concentration. Most tobacco- and menthol-flavored e-liquids on the market advertise even lower concentrations of nicotine—between 1% and 3%. Eonsmoke's kid-friendly flavors

that are geared toward hooking minors are more addictive and stronger than other e-liquids on the market that are more attractive to adult, habitual smokers.

10. The stakes could not be higher for our children. One in four North Carolina high school or middle school students who use e-cigarettes say they use the products because of the flavors,<sup>9</sup> and 81% of 12-17 year olds who use e-cigarettes began with a flavored version.<sup>10</sup>

11. Moreover, many underage users are not even aware that e-cigarettes contain nicotine. One 2018 study found that 11.5% of 8<sup>th</sup>-12<sup>th</sup> graders who use e-cigarettes believe they are inhaling flavored water vapor. A separate 2018 study reported that 63% of users aged 15-24 of popular e-cigarette brand JUUL did not know that all JUUL products, including the fruit- and dessert-flavored cartridges, contained nicotine.<sup>11</sup>

12. This lack of awareness and perception by kids is not surprising—and not their fault. The companies, like Eonsmoke, selling e-liquids that come in apple juice boxes, complete with a plastic straw taped to the side, and in flavors like “gummy bear” or replicating Lucky Charms or Cinnamon Toast Crunch cereals are

---

<sup>9</sup> NCDHHS, *supra* note 5.

<sup>10</sup> See American Academy of Pediatrics et al., Campaign for Tobacco-Free Kids, *The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars* (Mar. 15, 2017), [https://www.tobaccofreekids.org/microsites/flavortrap/full\\_report.pdf](https://www.tobaccofreekids.org/microsites/flavortrap/full_report.pdf).

<sup>11</sup> N.C. Department of Health and Human Services, Press Release: *Growing Number of North Carolina Teens at Risk of Addiction to Nicotine, Study Finds* (Apr. 11, 2019), <https://www.ncdhhs.gov/news/press-releases/growing-number-north-carolina-teens-risk-addiction-nicotine-study-finds>.

specifically and unlawfully targeting children and deceiving them about the highly addictive nature of nicotine e-liquid.

**II. Eonsmoke Failed to Utilize Adequate Age Verification to Ensure Minors Were Not Purchasing Its Products Online.**

13. In June 2013, the North Carolina General Assembly amended N.C.G.S. § 14, “Article 39. Protection of Minors” to broaden the definition of tobacco products to include vapor products and components of vapor products.<sup>12</sup> This expanded prohibitions on the distribution of tobacco products to persons under 18 to e-cigarettes and e-cigarette components such as device-compatible cartridges containing e-liquids, and separately bottled e-liquids and juices.

14. The amended statute also added a provision governing online sales or “other remote sales methods” of vapor products, since the previous iteration of the statute seemingly contemplated only brick-and-mortar retailers in outlining prohibitions designed to protect minors from tobacco sales. N.C.G.S. § 14-313(b2).

15. The new subsection, titled “Internet distribution of tobacco products,” requires that any retailer selling tobacco products online “shall perform an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process to establish that the individual ordering the tobacco product is 18 years of age or older.” *Id.*

---

<sup>12</sup> See S.L. 2013-165, § 1.  
<https://www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2013-2014/SL2013-165.html>

16. This provision became effective on August 1, 2013. *See* S.L. 2013-165, § 1. Therefore, any internet-based transaction that took place on or after August 1, 2013 by a retailer that resulted in the distribution of a vapor product to any North Carolina consumer was unlawful unless an independent, third-party age-verification service was engaged to establish that the purchaser was at least 18 years of age.

17. Although North Carolina has required any company selling e-cigarette devices or components, including e-liquids, through the Internet to perform age verification via an independent, third-party age-verification service since 2013, Eonsmoke did not even attempt to require age verification for its online sales until late 2018, if at all. To the extent Eonsmoke has engaged an independent third party to conduct age verification, the process utilized by Eonsmoke and/or its vendor is insufficient. Thus, upon information and belief, every online transaction between Eonsmoke and a North Carolina consumer from 2013 to the present has violated North Carolina law. Upon information and belief, many of these transactions allowed individuals under age 18 to purchase e-cigarette products directly from Eonsmoke.

18. Upon information and belief, in violation of N.C.G.S. § 14-313(b2), Eonsmoke continues to allow minors to access its website and purchase its nicotine-containing e-liquids and juices without using a third-party age verification procedure.

### **III. Eonsmoke Uses Deceptive and Unfair Marketing Strategies to Attract Underage Consumers.**

19. Eonsmoke actively markets its products to minors, both on its own websites and on social media. Eonsmoke's practices are substantially injurious to underage consumers and offend the established public policy of youth tobacco prevention, and thus violate N.C.G.S. § 75-1.1. *See Marshall v. Miller*, 32 N.C. 539, 548, 276 S.E.2d 397, 403 (1981).

20. Researchers at Yale School of Medicine surveyed teenagers to understand what they found "cool about e-cigarettes." The top two responses were (1) appealing flavors, and (2) performing vapor tricks, "such as blowing smoke rings or creating funnels of smoke that look like tornadoes."<sup>13</sup>

21. Similar to the tobacco industry's now-banned marketing practices designed to appeal to youth (such as using cartoon characters, celebrity endorsements, and targeted product placement), Eonsmoke uses candy-like flavors, vapor tricks, bright colors, sleek designs, easily concealable devices, sex appeal, and youth-friendly product names to promote its products to minors.

22. Eonsmoke sells and has sold e-cigarette products in flavors designed to look and/or taste like gummy bears, Froot Loops, cotton candy, other popular candy and desserts, and various fruit juices and slushies. Eonsmoke markets these products, typically through its social media pages or paid advertisements, by (a)

---

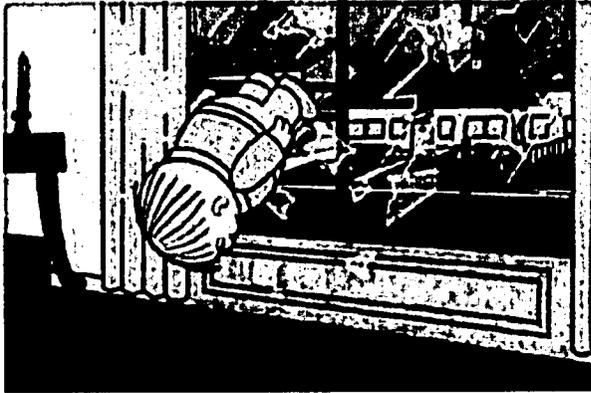
<sup>13</sup> "Vaping Tricks Increase Teens' Attraction to E-Cigarettes, Partnership for Drug-Free Kids, May 7, 2015, <https://drugfree.org/learn/drug-and-alcohol-news/vaping-tricks-increase-teens-attraction-e-cigaretstes/>.

picturing the products next to the actual candy or cereal popular among children that the product seeks to mimic, (b) using images of cartoon characters (e.g., Spongebob), and (c) using images of very young-looking users vaping their products.

23. Eonsmoke also uses marketing channels that are most popular among teenagers, and are less popular among adults. Young people are more likely to use social media platforms such as Instagram and Snapchat than adults, yet most of Eonsmokes' marketing activities take place on those platforms rather than in adult-oriented media. Eonsmoke's use of these youth-oriented social media channels directly promotes these child-friendly products to underage consumers.



bae: come over  
me: i cant  
bae: i have eon pods  
me:



eonsmoke That eon pod @eonsmoke  
@eonpods @juulcompatible  
@eonsmokepods @juul @judgang  
@juulcentral @juulnation

View all 28 comments

willpugg @enriquegabriel

\_jamhr\_king @enz\_buzzek

nightlife accurate

aaron.goodwin\_ That's about right

bananavocado @eonsmoke can you flip  
the pod color configuration with the cap?  
It's such a shame it is the way it is 😞 at  
least an option to have the color tip and  
just a black cap that gets thrown away. It's  
sad to see the cool vibrant colors getting  
wasted while the same normie mouth piece  
is left. It could get really wild and  
interesting 🤔👍👍👍



1215 likes



24. One Eonsmoke advertisement on Instagram explicitly promotes the concealable nature of e-cigarette devices that allows youth to use these products without detection by adults. The advertisement shows a battery-operated JUUL device, which resembles a flash drive and charges by plugging into a computer's USB portal, with the caption, "Mom! It's a USB drive!" One comment reads, "I told my dad that about my old juul and he actually fell for it lol." Eonsmoke's social media followers hear the message loud and clear: Eonsmoke aims to assist youth in obtaining and concealing product use from adults and other authority figures.

25. Another advertisement on Instagram appears to tout Eonsmoke's ability to camouflage its devices as bracelets to evade detection.



26. Eonsmoke also pays social media “influencers” to promote its products online, including Donny Karle (AKA “DonnySmokes” or “DonnyVapes”) – a 21-year-old vaper who is popular among young people. These promotional videos often encourage unlawful underage use. For example, one DonnySmokes video is titled, “How to HIDE & HIT Your JUUL at SCHOOL WITHOUT Getting CAUGHT.”<sup>14</sup>

<sup>14</sup> YouTube removed the DonnySmokes channel from its website after multiple platform policy violations. The next day, Karle started a new channel under the name DonnyVapes. DonnyVapes’ profile on YouTube redirects viewers to [www.donnysmokes.com](http://www.donnysmokes.com) and reflects nearly 120,000 subscribers. Karle’s videos are viewed approximately 3 million times per month by YouTube users. Karle is also popular on Instagram (@donnyk17), Snapchat (@Donny.Vapes), and Twitter (@donnysmokes17).

27. Eonsmoke pays Karle to review its products online and then reposts and promotes those reviews on social media platforms—often with an accompanying discount for Eonsmoke products. One review, posted by the DonnySmokes account on YouTube on March 23, 2018, has garnered 184,400 views. Eonsmoke paired this review with a coupon to get 20% off e-liquid cartridges.



Donny Smokes Eonsmoke JUUL Compatible Pods Review

184,410 views

1.4K 77 SHARE SAVE ...



Eonsmoke Pods & Salt Nic Vape Juices  
Published on Mar 23, 2018

SUBSCRIBE 2.3K

Use coupon code Instagram for 20% off your Juul compatible pods by eon today. Flavors like Blueberry, Watermelon, Strawberry, Mango, Cool mint, Caffe latte and Tobacco pods that fit your Juul device.



Eonsmoke Pods Review by Donny Smokes Pineapple and Blueberry 6% Nicotine JUUL Compatible

69,430 views

1K 49 SHARE SAVE ...



Eonsmoke Pods & Salt Nic Vape Juices  
Published on Aug 14, 2018

SUBSCRIBE 2.3K

Donny Smokes Reviews Eonsmoke 6% nicotine JUUL compatible pods and the version 2 Eon Device. Check out eonsmoke on Instagram and on their website.

28. Another influencer Eonsmoke has contracted with is named Steven Emerson, who gained popularity online for his YouTube videos featuring popular e-cigarette brand JUUL. Emerson's videos routinely use profanity and sophomoric humor targeting youth, refer to vapor products as "water vapor" and joke about the dangers of e-cigarette use and addiction.

29. Eonsmoke paid Emerson for more than 30 video advertisements promoting its products on Instagram and YouTube. In addition to publishing these advertisements to their own users, they tagged Emerson so that his social media followers (many of whom are underage) would also be exposed to the promotional material.



 eonsmoke • Follow

eonsmoke Tag someone that smells like dog shit because they still smoke cigarettes!

Follow [@stevie\\_emerson](#)  
[@benbashorfilms](#)

Warning: This product contains Nicotine. Nicotine is an addictive substance.

[#eonsmoke](#) [#juul](#) [#mrfbers](#) [#cigarettes](#)  
[#e.vports](#) [#quitsmoking](#) [#vaping](#)

22,870 views  
October 2, 2016

30. Unfortunately, these marketing practices are effective. A 2016 study showed that 78% of middle and high school students were exposed to e-cigarette advertisements from at least one source, such as product websites or social media. “Exposure to these advertisements increase[d] intention to use e-cigarettes among adolescent nonusers” and was “associated with current e-cigarette use, with increasing exposure being associated with increased odds of use.”<sup>15</sup>

31. On information and belief, Eonsmoke does not use age-gating procedures to prevent underage consumers from following its social media pages or accessing its websites. By not using age-gating procedures and using marketing channels that are predominately popular with young people, Eonsmoke purposely exposes minors to its e-cigarette marketing.

---

<sup>15</sup> *Jenssen & Walley, supra* note 12.

## **CLAIM FOR RELIEF**

### **Violations of the Unfair or Deceptive Trade Practices Act, N.C.G.S. § 75-1.1**

1. The allegations contained in paragraphs 1-31 are incorporated by reference as if they were set out at length herein.
2. Eonsmoke, in the course of marketing its e-cigarette devices and e-liquid products, engaged in unfair or deceptive trade practices affecting North Carolina consumers that are prohibited by N.C.G.S. § 75-1.1. Eonsmoke's unfair or deceptive omissions, acts, and practices include, but are not limited to, knowingly marketing, selling, and delivering addictive nicotine-based products to minors, including by:
  - a. Designing its products, including its kid-friendly flavors and appearance, to appeal to youthful audiences, knowing that that would include many minors;
  - b. Pursuing marketing strategies and campaigns that it knew would attract minors;
  - c. Failing to provide age-verification techniques for internet sales required by North Carolina law, thereby allowing many underage users to easily obtain its products.

## **JURY DEMAND**

3. The State demands trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, for the reasons outlined above, the State requests that the Court:

1. Issue a temporary restraining order enjoining Eonsmoke, its officers, directors, employees, and agents, and all those acting in concert with them, from offering, selling, delivering or in any manner providing e-cigarette products within this State;
2. Preliminarily and permanently enjoin Eonsmoke, its officers, directors, employees, and agents, and all those acting in concert with them, as appropriate;
3. Award civil penalties to the State from Eonsmoke pursuant to N.C.G.S. § 75-15.2;
4. Disgorge Eonsmoke's profits from its unfair or deceptive acts and practices to the State;
5. Award the State its costs, including a reasonable attorneys' fee, incurred by the investigation and litigation of this matter pursuant to N.C.G.S. § 75-16.1; and
6. Any and all further legal and equitable relief as the Court deems the State is entitled to receive.

This the 27th day of August, 2019.

JOSHUA H. STEIN  
Attorney General

W. Swain Wood  
General Counsel

Kevin Anderson  
Senior Deputy Attorney General  
Director, Consumer Protection Division

  
\_\_\_\_\_  
Laura H. McHenry  
Assistant Attorney General  
N.C. State Bar No. 45005  
[lmchenry@ncdoj.gov](mailto:lmchenry@ncdoj.gov)

Daniel Wilkes  
Assistant Attorney General  
N.C. State Bar No. 46500  
[dwilkes@ncdoj.gov](mailto:dwilkes@ncdoj.gov)

North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602  
Phone: (919) 716-6000  
Facsimile: (919) 716-605